

## REMARKS

In the Office Action mailed June 24, 2008, the Examiner rejected claims 33-36, 40, 41 and 53-55. By way of the foregoing amendments and the markings to show changes, Applicants have amended claims 33, 36, and 40 and added claims 59-71 with claims 35, 54, and 55 being canceled. No new matter has been added. The foregoing amendments are taken in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicant would otherwise be entitled in view of the prior art.

The examiner asserts that the amendment to claim 33 "...invention distinct from that as originally claimed since nearly all of the originally claimed apparatus has been deleted and replaced with limitations directed toward a completely different invention from that as original claimed." Applicant does not necessarily agree with the Examiner and believes the Examiner should examine the claims or should more appropriately issue an election requirement if that is the truly the issue. However, in the interest of advancing prosecution, Applicant has resubmitted claim 33 in a different amended form and has not presented previously filed (but not entered). The examiner has no basis to attack the presentation presently of new claims 59-65 as those claims are dependent upon claim 33. The features added by amendment in claim 33 are additional features that define over the prior art. Examination of the presently presented claims is now requested. The actions taken at present are without prejudice to pursue additional claims in a continuing application. Examination is respectfully requested.

### I. Claim Rejections under 35 USC § 103

The Office Action rejected claims 33-36, 40, 41, and 53-55 under 35 USC § 103(a) as being unpatentable over Weaver (US 3,625,489) in view of Goodhart et al. (US 6,659,684), either Wiley (US 6,998,010) or Damp et al. (US 4,601,605), and De Bruyne (US 5,088,919). Without acquiescing in this suggestion, Applicants have amended the language where necessary to overcome the rejections and believe that those claims and their dependents are patentable over the references of record.

#### a. Lack of Evidentiary support for Fact Findings

The Office Action's factual findings to support the rejection under 35 U.S.C. § 103 of the claims are not supported by the teachings of Wiley, Damp, and De Bruyne.

The Office Action suggests that it would be obvious to one of ordinary skilled in the art at the time of invention was made to have used a distance sensor with Weaver in order to

control heating by proximity of the heater to surface as taught by Wiley and Damp. Furthermore, the Examiner suggests that a controller is inherent and position sensors are also well known. These rejections only make a conclusion that Weaver is obvious in light of Wiley, Damp, and De Bruyne; however, the Examiner has failed to provide some articulated reasoning with specificity to support the legal conclusion of obviousness.

The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385 (2007) said, "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" *KSR*, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

b. No proper § 103 Rejection in light of Erroneous Fact Findings

The office action has failed to support the rejections with adequate facts. Even when facts were cited the facts were not supported by evidence found in the references. In view of the erroneous fact finding and a lack of evidentiary support in the references a proper rejection was not made under 35 U.S.C. § 103. The Examiner suggests that temperature sensor of Wiley and/or Damp, however there has been no showing that either of the temperature sensors of Wiley and Damp is capable of sensing a distance between the heater and the surface to be repaired for determining whether to turn on or off the heater by the controller. Accordingly, Applicants request reconsideration of these rejections. The present claimed combination as a whole is not taught or suggested by the prior art. The rejection should be withdrawn.

II. Support for Amendments to the Specification and the New Claims

Support for the amendments to the specification and the new claims 59-65 under 35 USC 112 may be found in the claims as originally filed in the PCT Application PCT/EP03/009144, which claims priority application to GB 0219088.2.

Further, by the present amendment, it does not follow that the amended claims have become so perfect in their description that no one could devise an equivalent. After amendment, as before, limitations in the ability to describe the present invention in language in the patent claims naturally prevent the Applicants from capturing every nuance of the invention or describing with complete precision the range of its novelty or every possible equivalent. See,

Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 62 USPQ2d 1705 (2002). Accordingly, the foregoing amendments are made specifically in the interest of expediting prosecution and there is no intention of surrendering any range of equivalents to which Applicants would otherwise be entitled.

#### **PETITION FOR EXTENSION OF TIME**

Applicants respectfully request and petition an appropriate extension of time to respond to the outstanding Office Action, of at least one (1) month. Please charge Deposit Account No. 50-1098 in the amount of \$65.00. For any deficiencies, please charge Deposit Account No. 50-1097 for any fee which may be due is hereby given.

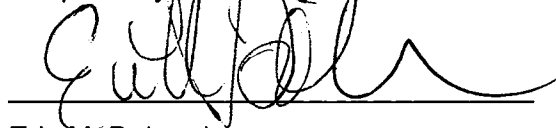
#### **CONCLUSIONS**

In view of Applicants' amendments and remarks, the Examiner's rejections are believed to be rendered moot. Accordingly, Applicants submit that the present application is in condition for allowance and requests that the Examiner pass the case to issue at the earliest convenience. Should the Examiner have any question or wish to further discuss this application, Applicant requests that the Examiner contact the undersigned at (248) 292-2920.

If for some reason Applicant has not requested a sufficient extension and/or have not paid a sufficient fee for this response and/or for the extension necessary to prevent the abandonment of this application, please consider this as a request for an extension for the required time period and/or authorization to charge our Deposit Account No. 50-1097 for any fee which may be due.

Dated: April 2, 2009

Respectfully submitted,



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